



# *Matthew v Sedman* [2021] UKSC 19

Francesca Perselli – Maitland Chambers

[f.perselli@maitlandchambers.com](mailto:f.perselli@maitlandchambers.com)



## Facts

- Trust owned shares in a company. Subject to scheme of arrangement
- Per scheme rules, could submit claims against the company “*on or prior to the Bar Date*” of 2 June 2011.
- Trustees did not make a claim.
  
- Claim against trustees for failing to take action - in negligence, breach of contract, breach of trust.
- Claim Form issued Monday 5 June 2017. Did 3 June 2011 count in calculating six year limitation?
- Last day for issuing claim Friday 2 June 2017 or Monday 5 June 2017?



## English Limitation Act 1980

S2: *“An action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued.”*

S5: *“An action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued.”*

S21(3): *“an action by a beneficiary... in respect of any breach of trust... shall not be brought after the expiration of six years from the date on which the right of action accrued”*



## Limitation Act 1960

S4(1)(a):

*“...the following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say—  
(a) actions founded on simple contract or on tort”*

S26(2):

*“...an action by a beneficiary to recover trust property or in respect of any breach of trust... shall not be brought after the expiration of six years from the date on which the right of action accrued...”*



## Submissions

A:

- 3 June 2011 should not be counted because loss was suffered on that day.
- “From” in the LA 1980 signifies a period subsequent to the date itself
- “Accrual” focuses on a date not a time of day. A day is indivisible so should not be counted.

R:

- Cause of action accrued at the same moment as the time elapsed for submitting a claim, on the last moment of 2 June 2011.
- There was no fraction of a day.



## Case law

- *Mercer v Ogilvy* (1796) 3 Pat App 434, HL(Sc) - date of execution of a deed did not count for establishing whether an entail was survived by 60 days by the grantor
- *Lester v Garland* (1808) 15 Ves 248 - deceased's day of death did not count for fulfilling a time limited condition under a will.
- *Goldsmiths' Co v West Metropolitan Railway* [1904] 1 KB 1, CA - the day of passing of an Act of parliament did not count in determining whether a notice was served within 3 years of its passing.
- NB that Interpretation Act 1978 has modified this.



## Case law continued

- *Stewart v Chapman* [1951] 2 KB 792, DC - where a person must be prosecuted “*within 14 days of commission of the offence*” the date of the offence is not counted.
- Court referred to this being a “*well established rule*”.
- *Gelmini v Moriggia* [1913] 2 KB 549 - time for payment of a promissory note expired midnight on 22 September 1906.
- 23 September 1906 counted for limitation purposes.



## Supreme Court's decision

- Distinction between “midnight deadlines” and acts giving rise to the cause of action.
- The rationale behind the general rule is that the law rejects fractions of a day. There would be prejudice to a claimant if the event occurred at seconds to midnight of the first day.
- In midnight deadline cases the cause of action arises at, not after, midnight of the deadline. The claimant still has the whole of that day to commence a cause of action so there is no prejudice to them.
- Statutory language of “from” is not helpful: its vulgar use can be exclusive or inclusive.
- But NB that some limitation statutes have provisions affecting interpretation of time limits, e.g. Scotland, Northern Ireland.



## Judgment

Per Lord Stephens at [47]:

*“However, in this case it was, in my opinion correctly, submitted that in a midnight deadline case even if the cause of action accrued at the very start of the day following midnight, that day was a complete undivided day. I consider that it would impermissibly transcend practical reality if the stroke of midnight or some infinitesimal division of a second after midnight, led to the conclusion that the concept of an undivided day was no longer appropriate. In that sense this would not only be impermissible metaphysics but also, in this context, such a minimum period of time does not cross the threshold as capable of being recognised by the law. Whether the issue is framed in terms of metaphysics, which the common law eschews, or of the principle that the law does not concern itself with trifling matters, the conclusion is the same: realistically, there is no fraction of a day. That being so, the justification in relation to fractions of a day does not apply in a midnight deadline case.”*



*Broad Idea International Ltd v Convoy Collateral Ltd Convoy Collateral Ltd v Cho [2021] UKPC 24*

- Where a court which had jurisdiction to grant injunctions had personal jurisdiction over a party, it had power to grant a freezing injunction (or other interim injunction) against that party to assist.
- There was no principle or practice which prevented the exercise of the power. Authorities to the effect that the court had no power to grant an interlocutory injunction unless it was ancillary to a cause of action were legally unsound.